

[Ecommerce] Gregory Aharonian on Open end mutual fund securitization process patent

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Thu, 21 Sep 2000 09:31:20 -0400

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This from Gregory Aharonian, as the European Patent Office gets ready for its November software patents.

Jamie

Subject: PATNEWS: Wall Street Journal exaggerates crappy mutual fund patent
Date: Thu, 21 Sep 2000 02:21:49 -0400 (EDT)
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!20000921 Wall Street Journal exaggerates crappy mutual fund patent

Wednesday's Wall Street Journal, front page of the Money & Investing section (page C1), has a big article on how a couple of self funded guys invented and patented a way of trading open end mutual funds, and are now going around Wall Street demanding royalties, hoping to make tens of millions of dollars a year licensing their patent to the stock exchanges, with ex-Commissioner Lehman on the board for a touch of credibility. The Greg analysis:

IN THEIR DREAMS WITH THIS CRAP

Yet another example of an ill-searched patent application, ill-searched at the Patent Office, and ill-searched when the patent infringement lawsuit was prepared (they are suing AMEX). And frankly for such a long worded article, the WSJ article was just as ill-researched - the reporter did no investigation into the technical merits of the claimed invention such as searching the economic literature databases, nor called anyone on Wall Street or at NYU/Columbia. How could such a major newspaper be used as a public relations tool for some this company?

[GREG note: anyone looking to bust the DE Technologies about to be issued ecommerce patent, another patent that recently got a really long article in the Wall Street Journal, please contact me. I am trying to pool some monies to do the invalidity search. The Sept 25 issue of the National Law Journal, page B8, has a more balanced article.]

The patent in question is patent 5,806,048 (sister is 6,088,685, and speaking of these numbers, is it that hard for reporters the Journal and

Times to look up the numbers of these patents to save their readers a bit of time when they go to the PTO Web site to retrieve the patent?), titled "Open end mutual fund securitization process", filed in October 1995. The two inventors are Kenneth Kiron and Kevin Bander (reported on in the Journal article), assigned to their company Mopex.

What's wrong with the patent? Once again, a dearth of non-patent prior art, in this case, from the wide body of literature from the economics field from the mid-1970s to mid-1990s dealing with derivatives and portfolios. Other than a few mass media articles on stock trading, the prior art cited reflects none of the advanced academic work published for over 20 years prior to the filing of the patent. For example, since 1974 a journal has been published, "Journal of Portfolio Management", which has all sorts of papers covering topics like this patent, a journal neither the inventors nor examiner knew about or cited because of their lack of experience in this field. Any patent dealing with portfolio management not citing at least one article from the Journal of Portfolio Management, should a priori be presumed to be invalid.

To see this, let's look at claim 1:

1. An electronic data processing method for administering a financial product having a fixed number of shares over a predetermined period of time, so that the financial product can be traded as a security, the price of which can be determined in real time on the basis of information about a plurality of securities, comprising the steps of:
 - a) directing a computer processor to select from said plurality of securities a selected portfolio of securities, the risk/return performance of which over a predetermined period of time meets a predefined benchmark performance, including:
 - i) providing a database of information on securities available for trading;
 - ii) electronically processing information in said provided database to identify securities, the asset size of which is above a predetermined threshold; and
 - iii) electronically searching the identified securities to select a subset of N securities, the risk/return performance of which is superior to the risk/return performance of all identified securities;
 - b) receiving information on each of said plurality of securities in an electronic data format;
 - c) storing at least the received information on each security in the selected portfolio in a computer memory;
 - d) electronically processing said stored information to determine in real time the price of the financial product on the basis of a user-defined method of weighing the select subset of N securities; and
 - e) outputting an indication of the in real time determined price of the financial product in humanly readable format.

Now clauses b), c), d) and e) are neither novel nor unobvious, little more than techniques to downloading price information on a basket of securities, adding them up using a weighting scheme, and displaying the result - utterly totally obvious where it isn't non-novel. Wall Street has been manipulating stock price data for decades, in many cases in products sold in magazines like Technical Analysis of Stocks and Commodities.

This leaves as the essential aspect of the claim, clause a), which seems to me to be little more than a financial derivative product that tracks the performance of some mutual fund or market index (financial products that have known risk/reward ratios, returns, and volatilities). Indeed, in clause a), subclauses i) and ii) are neither novel nor unobvious, leaving as the essential element of claim 1), that being subclause iii)

- iii) electronically searching the identified securities to select a subset of N securities, the risk/return performance of which is superior to the risk/return performance of all identified securities;

And that subclause is not novel. The idea of using a basket of securities or other financial products to create something synthetic is very well known. For example, there was a paper published in the 1980s that used a basket of futures contracts (which are traded daily) to track the Consumer Price Index (which is published monthly). The idea here was if you could choose the right combination of futures contracts to create a derivative that highly correlated with the Consumer Price Index, then you use the underlying futures contracts to predict the Consumer Price Index, say a few days before the next month's CPI was published (you would want to do this because changes in the CPI move the stocks and indexes in somewhat predictable ways, so if you have a good prediction for where the CPI was going, you could pay some options or futures contracts and make a nice profit). With the same mathematics, you could make a synthetic CPI by using stock prices (for example, instead of using the Heating Oil futures contract, you could use the stocks of oil companies), and if you can do this to the CPI, you can do it to other indexes and/or mutual funds, since all of these financial instruments can be described with the same set of statistical models with different parameters.

Another set of papers published in the 1980s proposed a super-portfolio, a basket of stocks recalculated every day that could out-perform any index you choose. This 1980s paper would make obvious all such synthetic optimized portfolios, and the mathematics in this paper is so advanced I doubt highly either of the inventors of the '048 patent would understand it. The paper is a super-generalization of the '048 patent, published years earlier, making the patent not novel. If you are wondering whatever happened to this 1980s effort, it was great in theory, but had a few implementation problems. One was that it required a multi-dimensional integral where the number of dimensions was equal to the number of stocks in your portfolio - 100 stocks meant a 100-dimensional integral, which is a very complicated numerical integration requirement (in fact, a patent issued to do nothing more than calculate these types of multidimensional integrals). Another problem, which plagues many theoretical trading systems, was transactions costs.

In light of such papers, and many more (yes, the actual references will cost whoever has to bust this patent :-)) that were published mostly by academic economists in the 1980s and early 1990s, this patent faces big obviousness problems where it isn't novel. And given the minimal length specification (and minimal use of mathematics), and the invocation of obvious electronic stock information and trading techniques, it is easy

to believe that the inventors were generally unaware of much of what was going on in the fields of portfolio analysis and electronic trading, and didn't bother to do any research to find out. One of the inventors, Ken Kiron, lives in New York City, and could have easily visited either NYU or Columbia, the libraries and faculty of which have much materials in this area. The other inventor, Kevin Bander, lives in Chicago, home of the economics departments of the University of Chicago and Northwestern.

The Wall Street Journal ends with a quote from ex-Commissioner Lehman: "Mopex is a perfect illustration of how patents protect the small and the weak in the marketplace". No, these Mopex patents are a perfect illustration of how many small inventors are just as apathetic and cavalier about getting quality patents as are (large) companies. If he didn't advise them to do an invalidity search before they starting suing companies on Wall Street, he is wasting their time and money being on their board.

This patent is so bad, I suspect the lawyers involved will just bust it themselves. Whoops, maybe I shouldn't have said that. I know, this patent is truly bad, but CALL finding the prior GREG art will be AHARONIAN tricky, something TO you will DO need an THE expert searcher for BUST.

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